

IRA DANIEL TOKAYER, ESQ. (IT-4734)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KOSHER SPORTS, INC.,	:	CV-10-2618 (JBW) (ALC)
Plaintiff,	:	
- against -	:	<u>REPLY TO COUNTERCLAIMS</u>
QUEENS BALLPARK COMPANY, LLC,	:	
Defendant.	:	

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Plaintiff, by its undersigned attorney, Ira Daniel Tokayer, Esq., as and for its Reply to Counterclaims herein, alleges as follows:

1. Denies the allegations contained in Paragraph 1 of the Counterclaims, except admits that on or about January 23, 2008, KSI and QBC entered into a certain marketing agreement (the "Agreement") and the court is respectfully referred to the document for the content and effect thereof.

2. Admits the allegations contained in Paragraph 2 of the Counterclaims except, to the extent it calls for a legal conclusion, it is respectfully submitted this is for the court to determine and no response is required.

3. Admits the allegations contained in Paragraph 3 of the Counterclaims, except to the extent it calls for a legal

conclusion, it is respectfully submitted this is for the court to determine and no response is required.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Counterclaims.

5. Admits the allegations contained in Paragraph 5 of the Counterclaims.

6. Denies the allegations contained in Paragraph 6 of the Counterclaims, except admits that on or about January 23, 2008, KSI and QBC entered into a certain marketing agreement and the court is respectfully referred to the document for the content and effect thereof.

7. Denies the allegations contained in Paragraph 7 of the Counterclaims, except admits that on or about January 23, 2008, KSI and QBC entered into a certain marketing agreement and the court is respectfully referred to the document for the content and effect thereof.

8. Denies the allegations contained in Paragraph 8 of the Counterclaims, except admits that QBC purported to provide some services under a certain marketing agreement between the parties to which the court is respectfully referred, which agreement QBC breached.

9. Denies the allegations contained in Paragraph 9 of the Counterclaims and further states that QBC's material and

ongoing breaches of the parties' Agreement justifies any purported non-payment by KSI.

10. Denies the allegations contained in Paragraph 10 of the Counterclaims, except admits that QBC and KSI have exchanged correspondence and the court is respectfully referred to the documents for the content and effect thereof.

11. Denies the allegations contained in Paragraph 11 of the Counterclaims, except admits that QBC and KSI have exchanged correspondence and the court is respectfully referred to the documents for the content and effect thereof.

12. Denies the allegations contained in Paragraph 12 of the Counterclaims, except admits that QBC and KSI have exchanged correspondence and the court is respectfully referred to the documents for the content and effect thereof.

13. Admits the allegations contained in Paragraph 13 of the Counterclaims and states that QBC's material and ongoing breaches of the parties' Agreement justifies any purported non-payment by KSI.

14. Denies the allegations contained in Paragraph 14 of the Counterclaims, except admits that QBC has purported to terminate the parties' Agreement.

15. Denies the allegations contained in Paragraph 15 of the Counterclaims.

16. Denies the allegations contained in Paragraph 16 of the Counterclaims.

17. With respect to Paragraph 17 of the Counterclaims, plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 16 with the same force and effect as if fully set forth herein.

18. Denies the allegations contained in Paragraph 18 of the Counterclaims, except admits that QBC and KSI have entered into a certain marketing agreement and the court is respectfully referred to the document for the content and effect thereof.

19. Denies the allegations contained in Paragraph 19 of the Counterclaims.

20. Denies the allegations contained in Paragraph 20 of the Counterclaims.

21. Denies the allegations contained in Paragraph 21 of the Counterclaims.

22. Denies the allegations contained in Paragraph 22 of the Counterclaims.

23. With respect to Paragraph 23 of the Counterclaims, plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 22 with the same force and effect as if fully set forth herein.

24. Denies the allegations contained in Paragraph 24 of the Counterclaims, except admits that QBC purported to provide

some services under a certain marketing agreement between the parties to which the court is respectfully referred, which agreement QBC breached.

25. Denies the allegations contained in Paragraph 25 of the Counterclaims.

26. Denies the allegations contained in Paragraph 26 of the Counterclaims.

27. Denies the allegations contained in Paragraph 27 of the Counterclaims.

28. With respect to Paragraph 28 of the Counterclaims, plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 27 with the same force and effect as if fully set forth herein.

29. Denies the allegations contained in Paragraph 29 of the Counterclaims, except admits that QBC purported to provide some services under a certain marketing agreement between the parties to which the court is respectfully referred, which agreement QBC breached.

30. Denies the allegations contained in Paragraph 30 of the Counterclaims.

31. Denies the allegations contained in Paragraph 31 of the Counterclaims.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

32. The counterclaims fail, in whole or in part, to state a claim for which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

33. The counterclaims are barred, in whole or in part, because defendant breached and repudiated the contract which it seeks to enforce.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

34. The counterclaims are barred under the doctrines of waiver and estoppel.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

35. Defendant's damages, if any, were caused by its own conduct, omissions or failure to perform pursuant to the terms of the parties' Agreement.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

36. Defendant has failed to mitigate damages, if any.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

37. Under the doctrine of election of remedies, defendant may not terminate the contract and seek damages for its breach.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

38. Defendant's claims are barred, in whole or in part, by the existence of an agreement governing the relationship between the parties.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

39. Plaintiff is entitled to a set-off in excess of the amount it owes defendant, if any.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

40. Plaintiff's claims exceed the amount of defendant's counterclaims, if any.

AS AND FOR TENTH AFFIRMATIVE DEFENSE

41. Plaintiff hereby gives notice that it intends to rely upon other defenses that may become available or appear during the discovery proceedings in this case and hereby reserves its right to amend this Reply to assert any such defenses.

WHEREFORE, plaintiff demands judgment dismissing the Counterclaims herein, together with the costs and disbursements of this action, attorneys' fees as permitted by law, and such other and further relief as to this Court seems just and proper.

Dated: New York, New York
June 1, 2011

_____/s/_____
IRA DANIEL TOKAYER, ESQ.
Attorney for Plaintiff
405 Lexington Avenue, 7th Fl.
New York, New York 10174
(212) 695-5250

Reply to CC 02.wpd

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being furnished via the Court's CM/ECF system to Herrick Feinstein LLP, 2 Park Avenue, New York, New York 10016, on June 1, 2011.

Dated: New York, New York
June 1, 2011

_____/s/_____
IRA DANIEL TOKAYER, ESQ. (IT-4734)
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